



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on December 16, 2016

Title	Agenda Item Type
Judicial Council–Sponsored Legislation (Subordinate Judicial Officers): Court Commissioners as Magistrates	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Pen. Code, § 808	December 16, 2016
Recommended by	Date of Report
Policy Coordination and Liaison Committee	October 28, 2016
Hon. Kenneth K. So, Chair	Contact
Trial Court Presiding Judges Advisory Committee	Cliff Alumno, 415-865-7683 cliff.alumno@jud.ca.gov
Hon. Jeffrey B. Barton, Chair	Eve Hershcopf, 415-865-7961 eve.herschcopf@jud.ca.gov
Criminal Law Advisory Committee	Sharon Reilly, 916-323-3121 sharon.reilly@jud.ca.gov
Hon. Tricia Ann Bigelow, Chair	

Executive Summary

The Policy Coordination and Liaison Committee, Trial Court Presiding Judges Advisory Committee, and the Criminal Law Advisory Committee recommend that the Judicial Council sponsor legislation to amend Penal Code section 808 to include “court commissioners,” a type of subordinate judicial officer, within the definition of those who may serve as a magistrate. Penal Code section 808 currently defines “magistrates” as the judges of the Supreme Court, Courts of Appeal, and superior courts. Since the duties of magistrates are easily distinguishable from the duties of judges, commissioner responsibilities could be increased to include magistrate duties without causing undue confusion. By expanding the pool of judicial officers who are authorized to exercise magistrate powers, the proposal is designed to promote court efficiencies, enhance access to justice, and provide court leadership with more flexibility to equitably address judicial workloads.

Recommendation

The Policy Coordination and Liaison Committee, the Criminal Law Advisory Committee, and the Trial Court Presiding Judges Advisory Committee recommend that the Judicial Council sponsor legislation to amend Penal Code section 808 as follows:

- Amend the statement in Penal Code section 808 defining those who may serve as magistrates by adding subdivision (d), “court commissioners” to the definitional statement.

Previous Council Action

No relevant previous Judicial Council action.

Rationale for Recommendation

Penal Code section 808 currently defines “magistrates” as the judges of the Supreme Court, Courts of Appeal, and superior courts. Court commissioners, a type of subordinate judicial officer (SJO), are not included in the statutory definition. The proposal would expand the pool of judicial officers who are authorized to exercise magistrate powers and perform magistrate duties. By expanding the authorized duties of commissioners, the proposal is designed to promote court efficiencies, enhance access to justice, and provide court leadership with more flexibility to equitably address judicial workloads.

The role of a magistrate is unique in the criminal justice system and differs from the role of a judge. The principal functions of magistrates include issuing search warrants, bench warrants, arrest warrants, and warrants of commitment (Pen. Code, §§ 807, 881(a), 1488, 1523); fixing and granting bail (Pen. Code, § 815a); conducting preliminary examinations of persons charged with a felony and binding defendants over for trial or release (Pen. Code, § 858); and acting as the designated on-call magistrate when court is not in session (Pen. Code, § 810).

The purpose of court commissioners and other SJOs is “to assist an overburdened judiciary with the performance of ‘subordinate judicial duties.’ ” (*Branson v. Martin* (1997) 56 Cal.App.4th 300, 305.) In criminal cases, court commissioners are authorized to perform a variety of duties, if directed to perform those duties by the presiding judge (Gov. Code, §§ 72190.1, 72190.2). However, commissioners do not currently have authority to issue search warrants (see 61 Ops.Cal.Atty.Gen. 487 (1978)) or to take and enter a guilty plea at arraignment (see 67 Ops.Cal.Atty.Gen. 162, 167 (1984)).

Since the duties of magistrates are easily distinguishable from the duties of judges, commissioner responsibilities could be expanded to include magistrate duties without causing undue confusion. In this manner, the proposal provides greater flexibility in the use of existing judicial and commissioner resources to increase access to justice while equitably addressing judicial workload concerns.

Comments, Alternatives Considered, and Policy Implications

Notable comments

The proposal was circulated for public comment from April 15 to June 14, 2016. A total of nine comments were received; seven agreed with the proposed changes, one did not agree, and one did not indicate a position. Both the Superior Court of Riverside County and the Superior Court of San Diego County agreed with the proposal, as did the California Court Commissioners Association and the California Judges Association (noting that their comments “are not representative of a final position on the proposal”). A chart with all comments received and the responses of both committees is attached at pages 7–11.

A commissioner of 22 years from the Superior Court of San Diego County opposed the proposal and noted, “I believe that some courts (maybe not all) would take advantage of their Commissioners by assigning them undesirable duties that the judges of those courts dislike, abhor, and detest.” The committees acknowledged there could be unintended consequences of the proposal that might negatively affect some commissioners but view the overall effect of the proposal as positive for commissioners, judges, and the criminal justice system as a whole.

Alternatives

The committees alternatively considered amending Penal Code section 808 to provide court commissioners with limited authority to exercise specifically defined magistrate powers and perform magistrate duties. (See Pen. Code, § 646.91(a) [commissioners are included among the judicial officers authorized to issue ex parte emergency protective orders for persons in immediate danger of being stalked]; and Pen. Code, § 809 [the Santa Clara County Superior Court nighttime commissioner is “considered a magistrate for the purpose of conducting prompt probable cause hearings for persons arrested without an arrest warrant”].) The committees, however, determined that a proposal to include court commissioners as magistrates for all purposes would provide greater flexibility, enhance court efficiencies, and enable courts to more effectively and equitably address workload issues while increasing access to justice.

Policy implications

Over the years, judicial workload demands have exceeded the number of available judicial officers.¹ As of June 30, 2014, there were 291 authorized commissioner full-time equivalent positions in the judicial branch.² The number of SJOs assigned to each court varies widely across the state. Several reasons favor broadening the scope of commissioner authority, including:

¹ Judicial Council of Cal., *The Need for New Judgeships in the Superior Courts: 2014 Update of the Judicial Needs Assessment* (November 2014), www.courts.ca.gov/documents/jc-20141212-itemT.pdf. This mandatory report to the Legislature describes the filings-based need for judicial officers in the trial courts and shows that an additional 270 full-time equivalent judicial officers are needed in 35 courts. Judicial need is calculated based on a complex workload formula. The statewide need for new judgeships is calculated by adding the judicial need among only the courts that have fewer judgeships than their workload demands.

² Judicial Council of Cal., *2015 Court Statistics Report: Statewide Caseload Trends, 2004–2005 Through 2013–2014*, p. 80 (2015), www.courts.ca.gov/12941.htm#id7495.

- The assignment flexibility that commissioners allow the courts;
- The expertise commissioners bring to many case types; and
- The ability of commissioners “to assist judges with routine preliminary matters, thereby freeing the judges for more complex matters.”³

In addition, recent rulings and legislation have enhanced the need for greater flexibility in fulfilling the duties of magistrates. The United States Supreme Court in *Missouri v. McNeely* (2013) 569 U.S. ___ [133 S.Ct. 1552, 185 L.Ed.2d 696], for example, ruled that search warrants are required for nonconsensual blood testing during driving-under-the-influence investigations, and that exceptions to the warrant requirement must be determined case by case based on the totality of the circumstances. (See Pen. Code, § 1524(a)(13), which was amended in response to *McNeely* to authorize courts to issue search warrants under these circumstances (Sen. Bill 717; Stats. 2013, ch. 317); and Pen. Code, § 1524(a)(16)(A)(i), which was also amended to authorize courts to issue search warrants for investigations relating to operating water vessels, water skis, an aquaplane, and similar devices while under the influence (Assem. Bill 539; Stats. 2015, ch. 118).) The ruling and resulting legislation have increased the number of search warrant requests, particularly off-hours requests, resulting in increased workload demands for judges who serve as on-call magistrates on nights and weekends.

Similarly, recently enacted legislation has expanded the courts’ workload by providing courts with authority to issue temporary emergency gun violence restraining orders (Pen. Code, §§ 18125–18145; Assem. Bill 1014, Stats. 2014, ch. 872). Penal Code section 18145(a)(2) authorizes the issuance of temporary emergency gun violence restraining orders in accordance with the procedures for obtaining a search warrant based on a sworn oral statement, if time and circumstances do not permit the submission of a written petition. Those procedures specifically authorize magistrates to issue oral search warrants when the court is in session (see Pen. Code, § 1526(b)). Further, Penal Code section 18145(b) requires the presiding judge of each superior court to designate at least one judge, commissioner, or referee to be reasonably available to issue temporary emergency gun violence restraining orders when the court is not in session. Because the statutory authority for this type of restraining order is new, the workload impact is not yet known but is anticipated to be significant for some courts. Expanding statutory authority to include court commissioners as magistrates would increase court flexibility in addressing these new workloads, and increase access to justice in response to the need for a more systemwide approach to balancing judicial resources.

Implementation Requirements, Costs, and Operational Impacts

Under the proposal, local court leadership would retain discretion to decide the extent of magistrate duties that could be performed by court commissioners. For those courts that choose to incorporate the magistrate role into commissioner duties, potential implementation costs may

³ See Judicial Council of Cal., *Subordinate Judicial Officers: Duties and Titles* (July 2002), p. 13, www.courts.ca.gov/documents/sjowgfinal.pdf. The report found that SJOs spent at least 75 percent of their time on criminal cases performing the duties of temporary judges.

include commissioner training. Because implementation would be voluntary, however, each court could determine whether potential efficiencies would outweigh implementation costs.

Relevant Strategic Plan Goals and Operational Plan Objectives

The proposed amendment to Penal Code section 808 supports the policies underlying Goal I, Access, Fairness, and Diversity, and Goal IV, Quality of Justice and Service to the Public. Specifically, this proposed amendment supports Goal I, objective 4, “Work to achieve procedural fairness in all types of cases”; and Goal IV, objective 3, “Provide services that meet the needs of all court users and that promote cultural sensitivity and a better understanding of court orders, procedures, and processes.”

Attachments

1. Text of proposed Penal Code section 808, at page 6
2. Chart of comments, at pages 7–11

Section 808 of the Penal Code would be amended, effective January 1, 2018, to read:

1 **§ 808. Persons who are magistrates**

2

3 The following persons are magistrates:

4

5 (a) The judges of the Supreme Court.

6

7 (b) The judges of the courts of appeal.

8

9 (c) The judges of the superior courts.

10

11 (d) Court commissioners.

LEG16-01

Subordinate Judicial Officers: Court Commissioners as Magistrates

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Court Commissioners Association by Jeri Hamlin President	A	<p>The California Court Commissioners Association supports and endorses the proposal to amend PC Section 808 to include court commissioners within the definition of those who may serve as a magistrate.</p> <p>Among other benefits, this legislative change will help courts of limited resources better utilize the many talents and extensive experience of their respective commissioners, and in so doing, benefit the public in a substantial way.</p>	No response required.
2.	California Judges Association by Lexi Purich Howard Legislative Director	A	<p>Thank you for the opportunity to provide comments on behalf of the California Judges Association (CJA).</p> <p>CJA supports the legislative proposal to amend Penal Code Section 808 to include court commissioners within the definition of those who may serve as magistrate.</p> <p>The proposed expansion of judicial officers who are authorized to perform magistrate duties, including reviewing and signing search warrants, is a timely and much needed response to increasing judicial workloads.</p> <p>Our comments here are intended to assist with the proposal at this stage and are not representative of a final position on the proposal. Thank you for the opportunity to provide these comments; we welcome any questions and further discussion.</p>	No response required.
3.	Hon. Jeffrey M. Harkavy Commissioner	A	I wish to add my voice in strong support of the proposed amendment to Penal Code Section 808,	No response required.

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	Superior Court of California, County of Los Angeles		including court commissioners in the definition of magistrates. In my opinion, there is no logical or public policy reason for court commissioners to not perform the duties of a magistrate. As Commissioners, we have the exact same qualifications to hold our position as that of judges. We are required to complete the same training classes, ongoing judicial education and we are equally bound to the Canons of Judicial Ethics. On a day to day basis, we perform the same duties as judge's and are held to the same high standards. By passing this proposed amendment, there will be more well trained judicial officers to perform the important tasks now performed by judges alone. Thank you for your consideration.	
4.	Hon. Scott P. Harman Commissioner Superior Court of California, County of Sacramento	A	I am e-mailing to indicate my support for the proposal to allow SJOs to act as magistrates. I would also like to suggest that there is a great need statewide for an assigned commissioner's program, especially in the AB 1058 arena where the Federal Regulations require a commissioner to hear the child support cases.	The suggestion to expand the proposal to create an Assigned Commissioner Program in the AB 1058 arena is beyond the scope and intent of the circulated LEG16-01 proposal. The committees will refer the suggestion to the appropriate Judicial Council committee for consideration.
5.	Orange County Bar Association by Todd G. Friedland President	A	This proposal appears to serve the stated purpose of balancing judicial workloads and increasing courtroom efficiency and access to justice. Many court commissioners have expertise similar to that of judges and would be reliable decision-makers in performing magistrate duties. This proposal is short-sighted and in the end provides only temporary relief if any from caseload congestion. Many counties already use	No response required.

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Subordinate Judicial Officers: Court Commissioners as Magistrates

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	Commentator	Position	Comment	Committee Response
			commissioners in many of the functions of the magistrate. Parties are already free to stipulate to a commissioner presiding at a preliminary hearing. This proposal merely masks the real problem which faces our court system; namely, the lack of adequate trial court funding and the unwillingness of the Governor to fill current judicial vacancies and the Legislature's failure to add needed judicial positions. Merely adding another body to nighttime warrant duty does little to solve California's long-term judicial needs.	
6.	Superior Court of California, County of Riverside by Marita Ford Senior Management Analyst	A		No specific comment.
7.	Superior Court of California, County of San Diego by Mike Roddy Executive Officer	A		No specific comment.
8.	Hon. Rebecca Wightman Commissioner, Dept. 416 Superior Court of California, County of San Francisco	N/I	I have been a Commissioner for almost two decades (in two different counties), and have had a variety of assignments. I wholeheartedly agree with the proposal, and urge that in fact, it be expanded as noted herein. The current proposal will indeed provide trial courts with greater flexibility in managing their respective judicial workloads. And it while it mentions potential implementation costs for commissioner training, I would point out that a number of courts may realize potential savings by not having to separately track and parcel out certain "duty judge" duties.	The suggestion to expand the proposal to amend Family Code § 4252 to authorize the Judicial Council to create an Assigned Commissioner Program in the Title IV-D child support system is beyond the scope and intent of the circulated LEG16-01 proposal. The committees will refer the suggestion to the appropriate Judicial Council committee for consideration.

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	Commentator	Position	Comment	Committee Response
			<p>I would also like to see the proposal go farther. Specifically, I would like to see the proposed legislation to also seed an amendment the Family Code §§4252, to either clarify or add a provision that would specifically authorize the Judicial Council under direction of the Chief Justice, to create an Assigned Commissioner Program in the Title IV-D child support system (also known as the AB1058 program). As trial court budgets become more and more strained, and with AB1058 funding having been stagnant for the past 8 years, the need for flexibility in the program has become critical. Such an amendment would provide the necessary flexibility to deploy experienced AB1058 Commissioners (similar to the Assigned Judges Program) to assist counties that may be experiencing coverage issues, backlogs, or are in need of other help to improve in certain areas identified and required as part of the federal funding. The CJA and CCCA have previously indicated support for such a proposal. Given the current creation by the Chief Justice of the 2016 AB1058 Funding Allocation Joint Subcommittee, this would be an ideal time to consider such a proposal that would assist trial courts in managing their workloads.</p> <p>Thank you for the opportunity to comment. I submit this comment as an individual, and not on behalf of any organization.</p>	

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	Commentator	Position	Comment	Committee Response
9.	Hon. Lee C. Witham Commissioner San Diego County	N	<p>I have worked as a Court Commissioner for over 22 years. Prior to those years, I practiced law for about 19 years, 10 of those years as a Deputy District Attorney.</p> <p>I am opposed to the pending proposal to amend Penal Code 808 in order to include commissioners as magistrates.</p> <p>I believe that some courts (maybe not all) would take advantage of their Commissioners by assigning them undesirable duties that the judges of those courts dislike, abhor, and detest. Please register my position in opposition.</p>	<p>The committees acknowledge the opposition submitted and understand that there may be some concerns regarding duties assigned to commissioners if the proposal should eventually pass. However, the committees believe that the proposal will provide for a more system-wide approach to balancing judicial workload.</p>